BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2665,	)	
Petitioner,	)	
v.	)	Public Case No. R 2000-049
NORTH JEFFERSON COUNTY AMBULANCE DISTRICT,	)	
Respondent.	)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units and majority representative status by virtue of Section 105.525, RSMo. 1994. The matter before the State Board of Mediation arises from the filing of a petition by the International Association of Fire Fighters, Local 2665 (hereinafter referred to as the Union) to represent certain employees of North Jefferson County Ambulance District (hereinafter referred to as the District). The Union seeks to represent a bargaining unit consisting of all EMT-Ps and Paramedics, excluding the Administrator and Lieutenants. The District objects to the petition for certification on the ground that the petition is not timely.

A hearing on this matter was held on August 10, 2000, in High Ridge, Missouri, at which representatives of the Union and the District were present. The case was heard by State Board of Mediation Chairman John Birch, Employee Member Patrick Hickey, and Employer Member Robert Douglass. At the hearing, the parties were given full opportunity to present evidence and make their arguments. The parties also filed briefs in this matter. After a careful review of the evidence and the arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

North Jefferson County Ambulance District is a political subdivision of the State of Missouri. The District provides emergency medical and transport services within the District and surrounding area.

The District is under the direction and control of a Board of Directors. These Directors are elected by the residents of the District. During the relevant time period, the Directors were Dan Lakin, Pansy "Pam" McKinney, Shelby Turnbough, Charlene Bohmie, and Sally Chisholm.

The District has an administrator, Earl Neal, who is in charge of the day-to-day operations. Additionally, the District employs three full-time Lieutenants. Prior to June 1999, the Lieutenants were Dottie Sandler, Janet Brown, and Joe Grygiel. The District also employs nine full-time paramedics. Prior to June 1999, the paramedics were Neil Beck, Pat Chisholm, Norm Corely, Laura Gunning, Jamie Guinn, David Henke, Jeff Hutchinson, Dale Kinnard, and Stacy Myers. In June 1999, Dottie Sandler resigned from her Lieutenant position and Jamie Guinn was promoted to Lieutenant. The District also employs part-time personnel.

The Board of Directors holds regular meetings on the third Tuesday evening of each month. Each Wednesday morning following the Board meeting, Earl Neal holds an employee staff meeting. Mr. Neal passes along pertinent information to the employees and discusses issues of concern to the employees. Then, Mr. Neal leaves the room and permits the employees to discuss issues and problems among themselves.

The District has two station houses, House 1 and House 2. The District's administrative offices and training room are located in House 1. The District operates three shifts or crews (A, B, and C). Each crew consists of a Lieutenant and three paramedics.

On November 17, 1998, the International Association of Fire Fighters, Local 2665, filed a petition for certification of representation (Case No. 99-027) with the State Board of Mediation to represent a bargaining unit consisting of the paramedics and Lieutenants of North Jefferson County Ambulance District. Eleven of the twelve individuals in the proposed bargaining unit supported the union's petition for certification. However, the District objected to the inclusion of the Lieutenants in the bargaining unit. In December 1998, at a union Christmas party, there was an altercation between a Director of the District and a union member. Following this incident, support for the union among the District's employees dwindled. At the District's January 1999 Board of Directors meeting, Jeff Hutchinson, Paramedic and Second Union Shop Steward, informed the Board that the Union would withdraw its petition for certification in Case No.99-027. Thereafter, the Union filed a request with the State Board of Mediation to withdraw its petition. On February 16, 1999, the Chairman of the State Board of Mediation dismissed the petition in Case No. 99-027.

In December 1998, after it appeared that the Union's original organizing effort was losing support among the District's employees, Jamie Guinn, Joe Grygiel and Neil Beck met to discuss alternative ways in which the District's employees might obtain a written agreement with the District. The meeting took place at the house where Jamie Guinn and Joe Grygiel resided. During the meeting, one of the men telephoned Earl Neal and requested that he come to the house and answer some of their questions. Mr. Neal agreed to meet with them and came to the house. Jamie Guinn, Joe Grygiel, and Neil Beck asked Mr. Neal if the employees could negotiate with the Board of Directors on their own behalf. Mr. Neal told them that they could form their own employee committee and draft their own proposal to present to the Board of Directors. The four men also discussed other issues such as wages.

At the next staff meeting, after Mr. Neal had left the room, Joe Grygiel raised the subject of the employees forming a committee and drafting an agreement for presentation to the Board of Directors. Mr. Grygiel also suggested that each crew should have a representative on the committee. Jamie Guinn volunteered for his crew, Crew C. David Henke volunteered for his crew, Crew A. Laura Gunning volunteered for her crew, Crew B. The employees also discussed various issues regarding the agreement. Jamie Guinn volunteered to type up the agreement. Following the formation of the committee, David Henke was transferred to Crew B. Neil Beck volunteered to replace Mr. Henke as a committee representative.

In preparing the initial rough draft of the employees' proposed "Memorandum of Agreement," Jamie Guinn spoke with employees of Rock Township Ambulance District and Big River Ambulance District and received guidance as to the form and content of such agreements. Additionally, Mr. Guinn obtained a copy of the Union's Memorandum of Understanding with Big River Ambulance District. Mr. Guinn modeled the rough draft after the Big River Ambulance District Memorandum of Understanding and the District's policies and procedures.

The committee representatives also held two meetings concerning the Memorandum of Agreement. All full-time employees were invited to the meetings to provide input regarding the agreement. The first meeting was held in the training room at House 1. Joe Grygiel sent a message via pager to all full-time employees informing them of the date, time, and location of the meeting. Jamie Guinn, Laura Gunning, Neil Beck, Dale Kinnard and Joe Grygiel attended this first meeting. At the meeting, Jamie Guinn gave both Laura Gunning and Neil Beck each a copy of his initial rough draft of the agreement. They went through the items in the rough draft.

A second employee meeting concerning the agreement was held at House 2. Again, Joe Grygiel sent a message via pager to all full-time employees of the District

informing them of the date, time, and location of the meeting. Only the committee representatives attended this second meeting.

Given the poor attendance at these meetings, it became incumbent upon the committee representatives to circulate the draft agreement and obtain suggestions from their crews concerning necessary changes. Based upon the meetings and the committee representatives' discussions with the employees, changes were made in the rough draft. Items covered in the employees' proposed Memorandum of Agreement included wages, benefits, medical coverage, vacation, holiday pay, sick leave, longevity pay, uniforms, and grievances. Once the employees' proposed agreement was in final form, the committee representatives were responsible for obtaining the employees signatures on the document. The three Lieutenants and nine full-time paramedics all signed the Memorandum of Agreement.

A few days prior to the March 1999 Board meeting, Jamie Guinn gave a copy of the employees' proposed Memorandum of Agreement to the District's Administrator, Earl Neal. Mr. Guinn and Mr. Neal discussed briefly the proposal and Mr. Guinn pointed out items of concern to the employees. Mr. Neal stated that he would review the employees' proposal and give his thoughts concerning the proposal. Mr. Neal used this document as a working document. He went through the employees' proposal page-by-page and made notes in the margins of the document as to what he thought the District could and could not do given next year's budget.

At the March 16, 1999, Board of Directors meeting, the Directors were informed that the employees had formed a committee. Jamie Guinn distributed to the Board the employees proposed Memorandum of Agreement. The Board decided to discuss the employees' proposal at their next Board meeting.

On March 17, 1999, Mr. Neal held an employee staff meeting. Following the staff meeting, Mr. Neal met with the employee committee representatives. Mr. Neal went

through the employees' proposed Memorandum of Agreement and his notes. He gave the committee representatives his opinion as to what the District could do based upon the upcoming budget. The committee representatives stated that they wanted to see the District's counterproposal. Within a few days of this meeting, Mr. Neal drafted the District's counterproposal which was titled “Employee Agreement.”

At the April 13, 1999, Board of Directors meeting, the Board tabled consideration of the proposed employee agreement. The Board requested that Mr. Neal obtain additional information for the Board's consideration. In accordance with the Board's request, Mr. Neal performed additional budget analysis concerning the employees' proposal. He also prepared documents concerning his analysis for the Board's consideration.

An employee staff meeting was held on April 14, 1999. Following the staff meeting, Mr. Neal told the committee representatives that he had to see them. At that point, Mr. Neal laid the District's counterproposal, the Employee Agreement, on the table. He told the committee representatives that he thought this was the best the District could do and that they should review the document. Mr. Neal then left the room without discussing the District's counterproposal with the committee representatives.

The committee representatives took the District's counterproposal back to their respective crews. At least one employee expressed concern with the use of the word agreement in the District's counterproposal. Other employees wanted the District to pay for required continuing education courses and to pay them for their time while attending the classes. Based upon these comments by the employees, Mr. Neal made changes in the District's counterproposal. The District's counterproposal was changed to “Employee Memorandum of Understanding.”

During the May 25, 1999, Board of Directors meeting, the Board approved the Employee Memorandum of Understanding as the District's official counterproposal to its

employees. Board Chairperson, Dan Larkin, and Vice Chairperson, Kyle Forbuss signed the District's counterproposal.

At the staff meeting on May 26, 1999, Mr. Neal met with the committee representatives. Mr. Neal handed the District's approved counterproposal to Mr. Guinn and stated that it was the District's last offer. Mr. Neal further stated that if the employees agreed with the Employee Memorandum of Understanding, the committee representatives should sign the document.

No vote of the employees was taken concerning the District's proposed Employee Memorandum of Understanding. However, Jamie Guinn personally spoke to the employees and he determined that a majority of the employees favored the Employee Memorandum of Understanding. Therefore, on June 13, 1999, the committee representatives signed the Employee Memorandum of Understanding. The District's Board of Directors ratified the Employee Memorandum of Understanding at the June 1999 Board meeting. The Employee Memorandum of Understanding became effective on November 1, 1999.

The Employee Memorandum of Understanding runs for a term of three years and expires on November 1, 2002. The Employee Memorandum of Understanding covers the Lieutenants and full-time paramedics. It also covers the issues of wages, benefits, medical coverage, vacation, sick leave, holiday pay, longevity pay, uniforms, training compensation, and grievances. As a result of the Employee Memorandum of Understanding, the employees received wage increases ranging from $6,000 to $11,000 per year. This represented wage increases of seventeen to thirty percent. The employees also received two additional vacation days per year. The employees are now permitted to accumulate up to twelve sick days, instead of the previous limit of nine. Additionally, the employees' yearly uniform allowance was increased from $150 to $250.

The District now pays for the employees' continuing education courses and for the employees' time while attending continuing education courses.

As for the Lieutenants, they receive an additional $1,500 per year because they have additional job duties, but there is little evidence as to what these additional job duties are. Lieutenants have no control as to which crew an individual employee is assigned. Under the Employee Memorandum of Understanding, the Lieutenants do play a limited role in the grievance process. If an employee has a grievance with a disciplinary action or a policy, the employee is to first discuss the matter with his or her Lieutenant. The Lieutenant will then refer the grievance to the District's Administrator for clarification and explanation. After a decision is made concerning the grievance, the Lieutenant will transmit a copy of the written determination to the employee.

On December 2, 1999, paramedic Pat Chisholm filed a grievance under the grievance procedure set forth in the Employee Memorandum of Understanding. Mr. Chisholm charged that the District violated the Employee Memorandum of Understanding by changing the employees' insurance coverage. On December 6, 1999, the District answered the grievance.

CONCLUSIONS OF LAW

The Union seeks to represent a bargaining unit consisting of all EMT-Ps and Paramedics, excluding the Administrator and Lieutenants. At the hearing, the parties stipulated that a bargaining unit consisting of Emergency Medical Technicians and Paramedics is an appropriate bargaining unit. However, the District objects to the petition for certification on the ground that the petition is not timely because of the contract bar rule. As the petitioning party, the Union bears the burden of proof in this case. *Central County Emergency 911 v. International Association of Firefighters Local 2665,* 967 S.W.2d 696, 699 (Mo. App. W.D., 1998).

This Board is charged with deciding issues concerning appropriate bargaining units and majority representative status. Section 105.525 RSMo. 1994 provides that "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." Since the parties have stipulated that a bargaining unit consisting of Emergency Medical Technicians and Paramedics is an appropriate bargaining unit, the two questions before this Board are (1) whether or not the employee committee is a labor organization within the meaning of the Missouri Public Sector Labor Law, and (2) whether or not the Employee Memorandum of Understanding acts as a contract bar in this case making the Union's petition for certification untimely.

The Board finds a number of aspects of this case troubling. First, a determination of credibility was difficult due to the amount of self-serving testimony solicited during the hearing by both parties. Second, the timing of the formation of the employee committee is suspect. Third, the manner in which the employee committee was formed and operated gives the Board pause. These factors have made this a close case and a very difficult decision for the Board. However, the Board has a responsibility to preserve order by deciding issues with regard to majority representative status. Therefore, the Board will rely on the documentary evidence in the record and previous decisions of this Board in rendering its ruling in this matter.

We will first address the question of whether or not the employee committee is a "labor organization." Section 105.510 RSMo. provides that:

> Employees, except police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join **labor organizations** and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing. [Emphasis added.]

However, the Missouri Public Sector Labor Law does not define "labor organization." In the course of defining certain language contained in the Public Sector Labor Law, this Board has previously looked to the National Labor Relations Act, as interpreted by the National Labor Relations Board, for guidance. *Hillsboro Educational Support Association, MNEA/NEA v. Hillsboro R-III School District*, Case No. R 90-032 at 6 (SBM 1990). Specifically, we have used the National Labor Relations Act's definition of "labor organization" with judicial approval. *Id*. (*citing, Baer v. Civilian Personnel Division,* 747 S.W.2d 159 (Mo. App. 1988.) Accordingly, that same definition will be applied herein.

The National Labor Relations Act, 29 U.S.C. Section 152 (5), defines "labor organization" as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Applying this two part definition, the Board will hold that the employee committee in this case to be a labor organization if it finds:

1. Employee participation in the committee; and

2. That the committee was created for the purpose in whole or in part of dealing with the District concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of employment.

See, *Hillsboro Educational Support Association, MNEA/NEA*, Case No. R 90-032 at 7.

Based upon the record before us, the employee committee is a labor organization. The employee committee in this case clearly meets the first criteria of employee participation. The committee representatives were employees of the District. Further, the fact that the committee representatives volunteered and were not elected by the employees does not disqualify the employee committee from being a labor

organization. *Electromation, Incorporated v. National Labor Relations Board,* 35 F.3d 1148 (7th Cir. 1994).

In the *Electromation* case, the employer, in response to employee dissatisfaction with its attendance bonus/wage policy, formed five action committees. Each committee was to be composed of up to six employees and one or two members of management. Employee participation in the committees was to be on a volunteer basis. Employee sign-up sheets were posted by the employer and employees signed-up to be on the committees. However, some employees signed–up for more than one committee. The employer decided that each employee could only serve on one committee. Therefore, the company's Employee Benefit Manager, who had been assigned the task of coordinating the committees' activities, made the final determination as to committee membership. The National Labor Relations Board held that action committees constituted labor organizations. *Electromation, Incorporated v. National Labor Relations Board,* 35 F.3d at 1154. The Court of Appeals agreed with the Board's finding that the action committees constituted labor organizations. *Id.* at 1161.

Employee participation in the employee committee is also evidenced by the fact that the Lieutenants and full-time paramedics all signed the original employee proposal that was presented to the District's Board of Directors. The Union argues that participation in the employee committee by the Lieutenants was improper because they are supervisors and therefore, agents of the District. However, this Board has never decided the issue of whether or not the Lieutenants are supervisors. Furthermore, as will be discussed more fully later in this decision, the Board could not find the Lieutenants to be supervisors based upon the record in this case. Therefore, the Lieutenants participation in the employee group was not improper.

Additionally, a finding by this Board that the Lieutenants were supervisors would not disqualify the employee committee from being a labor organization. *Electromation,*

Incorporated v. National Labor Relations Board, supra. In the *Electromation* case, the National Labor Relations Board found the employee action committees to be a labor organization despite the fact that management participated on the committees. *Id.*

The employee committee also meets the second criteria of a labor organization in that it was created to deal with the District concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. It is first noted by the Board that the term "dealing with" is broader that the term "bargaining with." *National Labor Relations Board v. Cabot Carbon Company,* 360 U.S. 203, 211, 79 S.Ct. 1015, 1020, 3 L.Ed.2d 1175 (1959). The two terms should not be read as synonymous. *Id.* In the *Cabot Carbon Company* case, the United States Supreme Court held that employee committees, even though they had never negotiated a formal bargaining agreement, were labor organizations.

The employee committee in this case was created by the employees for the specific purpose of obtaining a written agreement with the District concerning terms and conditions of employment. To that end members of the employee committee prepared a written "Memorandum of Agreement" which was signed by the employees and presented to the District's Board of Directors. The issues covered by that document included wages, benefits, medical coverage, vacation, holiday pay, sick leave, longevity pay, uniforms, and grievances. The entire process ultimately culminated with the execution and ratification of an Employee Memorandum of Understanding which covered the issues of wages, benefits, medical coverage, vacation, sick leave, holiday pay, longevity pay, uniforms, training compensation, and grievances. As a result of the Employee Memorandum of Understanding, the employees received substantial wage increases, additional vacation days, and are permitted to accumulate additional sick days. Additionally, the employees' yearly uniform allowance was increased from $150 to $250. Further, the District now pays for the employees' continuing education courses and for

the employees' time attending continuing education courses. The Employee Memorandum is currently in effect and operative. Therefore, the employee committee accomplished the purpose for which it was originally created. Clearly the employee committee meets the second criteria of a labor organization.

Lastly, the Board notes that the employee committee's lack of formal structure does not preclude it from being a labor organization. This Board has held that a formal organizational structure is not a prerequisite to finding an entity to be a labor organization. *See, Hillsboro Educational Support Association, MNEA/NEA*, Case No. R 90-032 at 7-8. This is consistent with decisions from the National Labor Relations Board and the federal courts. "The [National Labor Relations Board] has often held that formal structure or organization is not an essential requisite for finding a labor organization." *Columbia Transit Corporation*, 237 NLRB 1196, 1196 (1978). *See also, Lane Aviation Corporation*, 211 NLRB 824, 824 (1974), and *Sahara Datsun, Inc. v. National Labor Relations Board,* 811 F.2d 1317, 1319 (9th Cir. 1987).

Based upon the foregoing, the Board finds that the employee committee is a labor organization within the meaning of the Missouri Public Sector Labor Law.

Now turning to the issue of whether or not a contract bar exists in this case, the Board finds the Employee Memorandum of Understanding between the District and its employees is valid and that a contract bar does exists. Therefore, the Union's petition for certification is not filed timely.

The Board has long recognized that an agreement between an employer and an incumbent union will make untimely any petition for certification filed by another union unless the petition is filed during the thirty day period commencing on the 90th day and ending on the 61st day preceding the termination of the agreement. *Institutional & Public Employees Union, Local 410, AFSCME, AFL-CIO v. City of St. Louis, Water Division,* Case No. R 87-006 at 5-6 (SBM 1987). *See also American Federation of Teachers,*

Local 420, v. St. Louis board of Education, Case No. 79-055 (SBM 1980); and *Association of Probation and Parole employees v. Dept. of Corrections and Human Resources,* Case No. 81-028 (SBM 1982). This is referred to as the contract bar rule. The National Labor Relations Board and this Board apply the contract bar rule based on a concern for industrial stability. *City of Springfield, Missouri, d/b/a City Utilities of Springfield, Missouri v. International Brotherhood of Electrical Workers, Local Union 753,* Case No. UC 88-005 at 7 (SBM 1988). In applying the contract bar rule, the Board balances the competing interests of the employees' freedom of choice in selecting a bargaining representative and the stability of collective bargaining agreements between an employer and the employees' elected union. *Id.* at 7-8.

The Board will recognize a contract bar if an employer (1) meets, confers and discusses proposals concerning customary terms and conditions of employment with the employee's bargaining representative; (2) reduces those discussions to writing; (3) presents such proposals to the appropriate governing body; and (4) the governing body adopts those proposals. *Institutional & Public Employees Union, Local 410, AFSCME, AFL-CIO v. City of St. Louis, Water Division,* Case No. R 87-006 at 6. Additionally, the terms of the agreement must clearly encompass the employees sought in the petition. *Id.*

These criteria are met in this case. On March 17, 1999, the District's Administrator met with the committee representatives to discuss the employees' proposed Memorandum of Agreement. They went through the employees' proposal page-by-page and the Administrator told the committee representatives what he thought the District could do given its budget constraints. The issues covered by the employees' proposed Memorandum of Agreement included wages, benefits, medical coverage, vacation, holiday pay, sick leave, longevity pay, uniforms, and grievances. Clearly, the employer's representative and the employees' representatives met, conferred, and

discussed the customary terms and conditions of employment. The first, criteria is satisfied in this case.

The process by which the District and the employee committee arrived at an executed Employee Memorandum of Understanding involved the exchange of three written documents. The first document was the employees' proposed Memorandum of Agreement. The District's Administrator drafted a counterproposal titled Employee Agreement. After receiving employee feedback and comments concerning the counterproposal, the District's Administrator made changes in the Employee Agreement. What emerged was the Employee Memorandum of Understanding. The results of the negotiations were clearly reduced to writing. The second criterion is met.

On May 25, 1999, the Board of Directors approved the Employee Memorandum of Understanding as the District's official counterproposal. The Board's Chairperson and Vice Chairperson signed the Employee Memorandum of Understanding. The Employee Memorandum of Understanding was then given to the committee representatives. The committee representatives signed the Employee Memorandum of Understanding on June 13, 1999. The Employee Memorandum of Understanding was then ratified by the District's Board of Directors at their June 1999 Board meeting. Clearly, the third and fourth criteria are met in this case.

The terms of the Employee Memorandum of Understanding clearly encompass the employees sought in this petition. The Union seeks to represent the District's paramedics. The Employee Memorandum of Understanding covers these paramedics.

The Union maintains that the Employee Memorandum of Understanding is not valid because it covers an inappropriate bargaining unit. The Union argues that the Lieutenants are supervisors and are, therefore, not properly a part of the bargaining unit covered by the Employee Memorandum of Understanding. However, as previously noted, this Board has never decided the issue of whether or not the Lieutenants are

supervisors. Based upon the record before it, the Board cannot find the Lieutenants to be supervisors.

An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 1994 as:

> A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, this Board and the courts have consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. *International Association of Firefighters, Local 2665 v. City of Kirkwood,* Case No. R 89-024 (SBM 1989); *MNEA Springfield Education Support Personnel v. Springfield R-12 School District,* Case No. UC 88-021 (SBM 1988); and *St. Louis Fire Fighters Association, Local 73 v. City of St. Louis,* Case No. 76-013 (SBM 1976). *See also, Golden Valley Memorial Hospital v. Missouri State Board of Mediation,* 559 S.W.2d 581 (Mo.App. 1977). The rationale for this exclusion is that supervisors do not have a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employees they supervise.

This Board has traditionally used the following indicia to determine supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;

2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;

3. The number of employees supervised and the number of other persons exercising greater, similar, and lesser authority over the same employees;

4. The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;

5. Whether the person is primarily supervising an activity or primarily supervising employees; and

6. Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.[1]

Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.[2]

The Lieutenants have no authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees. The Lieutenants have no control as to which crew an individual employee is assigned. The Lieutenants do play a limited role in the grievance procedure. If an employee has a grievance with a disciplinary action or a policy, the employee is to first discuss the matter with his or her Lieutenant. At that time, the Lieutenant will refer the grievance to the District's Administrator for clarification and an explanation. Once the Lieutenant refers the grievance to the Administrator, it then appears that the Lieutenant's role is limited to transmitting a copy of the written determination on the grievance to the employee. The Lieutenants do not satisfy the first factor.

There is also no evidence that the Lieutenants have the authority to direct and assign the work force. Therefore, the Lieutenants do not satisfy the second factor.

As for the number of employees supervised, each Lieutenant, arguably, supervises three individuals. The crews are composed of a Lieutenant and three paramedics. The Lieutenants answer to the District's Administrator and the Administrator supervises all of the District's employees. Further, without evidence that

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[1] See, for example, *City of Sikeston*, Case No. R 87-012 (SBM 1987).
[2] See, for example, *Monroe County Nursing Home District, dba Monroe Manor*, Case No. R 91-016 (SBM 1991).

the Lieutenants actually supervise the paramedics, the number of paramedics on each crew is of little importance.

As for their level of pay, the Lieutenants receive an additional $1,500 per year because they have additional job duties. However, there is virtually no evidence in the record as to those additional job duties. Therefore, the Board cannot determine if the Lieutenants are being paid for their skills or for their supervision of the paramedics. The fourth factor is not satisfied.

There is no evidence as to whether the Lieutenants supervise activities or employees. Therefore, the fifth factor is not satisfied.

Lastly, there is no evidence as to how much of the Lieutenants time is spent working alongside the paramedics. The sixth factor is also not satisfied.

Based upon the record, the Board finds that the factors are not present in sufficient combination and degree to warrant the conclusion that the Lieutenants are supervisors. Therefore, the employees covered by the Employee Memorandum of Understanding do comprise an appropriate bargaining unit.

Finally, the Union argues that the Employee Memorandum of Understanding is not valid because there was no meeting of the minds. However, Memorandums of Understanding under the Missouri Public Sector Labor Law are clearly distinguishable from an ordinary contract. *See, Sumpter v. City of Moberly,* 645 S.W.2d 359 (Mo. Banc 1983). Therefore, the Missouri contract law cases cited by the Union are not applicable herein.

Furthermore, the record in this case does evidence a meeting of the minds. The issues covered by the employees' proposed Memorandum of Agreement included wages, benefits, medical coverage, vacation, holiday pay, sick leave, longevity pay, uniforms, and grievances. The Employee Memorandum of Understanding that was signed by the committee representatives and ratified by the District's Board of Directors

covered the issues of wages, benefits, medical coverage, vacation, sick leave, holiday pay, longevity pay, uniforms, training compensation, and grievances.

In support of its position that there was no meeting of the minds, the Union points to evidence in the record that paramedic Neil Beck did not agree with the pay scale incorporated into the Employee Memorandum of Understanding. However, Mr. Beck signed the Employee Memorandum of Understanding. Therefore, the Board finds that there was a meeting of the minds.

Based upon the foregoing, the Board finds that the Employee Memorandum of Understanding executed by the District and the committee representatives is valid. Therefore, a contract bar exists in this case and the Union's petition for certification is not filed timely.

The Board's decision herein does not foreclose the Union from ever filing another representation petition. It only delays the filing of such a petition until the appropriate "open window" period.

ORDER

The State Board of Mediation holds that the Employee Welfare Committee is a labor organization. The Board further holds that the Memorandum of Understanding executed by the District and the Employee Welfare Committee in June 1999 acts as a contract bar in this case and therefore, the Union's petition for certification is untimely. Accordingly, the petition for certification is hereby dismissed.

Signed this 3rd day of January, 2001.

STATE BOARD OF MEDIATION

/s/ John A. Birch
John A. Birch, Chairman

(SEAL)

/s/ Patrick Hickey
Patrick Hickey, Employee Member

/s/ Robert Douglass
Robert Douglass, Employer Member